



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Wall Financial Corporation
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, FF

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy. The hearing was conducted via teleconference and was attended by an agent for the landlord and the female tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for late fees; for carpet cleaning; for previous damage to the rental unit; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 32, 37, 38, , 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has submitted into evidence a copy of a tenancy agreement signed by the parties on September 13, 2013 for a 6 month tenancy beginning on October 1, 2013 for a monthly rent of \$1,495.00 due on the 1st of each month with a security deposit of \$747.50 paid. The tenancy ended on August 15, 2015 when the tenants vacated the rental unit.

The parties agreed the tenant failed to pay the full month's rent for the last month of the tenancy, leaving a balance of \$747.50 owed. The landlord seeks to recover a late payment fee of \$20.00 for a late rental payment for the month of April 2014 and \$20.00 for the month of August 2014.

The landlord submits that the tenants agreed to pay \$105.00 for carpet cleaning at the end of the tenancy and has submitted a document signed by the female tenant agreeing to this amount. The tenant confirmed she had agreed to pay for carpet cleaning. The landlord has also submitted a copy of an invoice for the carpet cleaning in several units that confirms the actual cost to the landlord for carpet cleaning was \$95.40 less 6% or \$89.68. The landlord confirmed, during the hearing, that this was the amount paid for carpet cleaning.

The landlord also submits that in May 2014 the landlord was called to the tenant's unit to investigate a problem with the toilet that required the landlord to replace the toilet. The landlord submits that after the toilet was removed it was broken to find what the problem was in the toilet. The landlord submits a set of dentures was found in the toilet. The landlord seeks compensation in the amount of half the amount billed for this work or \$420.50.

The tenants submit that they had not had any problems with the toilet during their tenancy until the day after the landlord had move the toilet to repair drywall behind the toilet. The tenants submit that when the landlord replaced the original toilet they heard the landlord using the plunger and they asked what he had done to the toilet but no response was provided.

The tenant also submits that after this the landlord left and returned with a "snake" to clean out the drains and that once he was finished he declared that he had fixed the toilet. The tenant submits that she found two knife blades and drywall in the toilet just after the landlord left and she called the landlord back who flushed the toilet and it overflowed and that it continued to overflow for the next week.

The tenants agree that they were advised that the problems with the toilet resulted from a denture being found in the toilet. The tenants submit that neither one of them have dentures. The landlord testified that she had photographs of the item causing the obstruction and that she believed that they were not real dentures but rather "Halloween toy dentures".

I note that none of the correspondence between the parties submitted into evidence indicates that the obstruction found was anything but real dentures and the landlord did not provide any photographic evidence to confirm whether the dentures were real or toys.

The tenant submits, in relation to the issue of late fees, that she had provided the landlord with a rent cheque for the month of April 2014 but that the landlord lost it and when she was informed that the landlord did not have the cheque she issued a new one. The tenant submits that she should not be responsible for this late fee.

The parties agreed that at the time of this rental payment the current property manager was just taking over responsibilities for this property and the cheque had been provided to the previous property manager.

As to the August 2014 late fee the tenant submits that she had only paid ½ the amount of rent of August 2014 because she advised the landlord in writing that they could use the security deposit for the balance of rent and as such, she was not late paying rent.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 21 of the *Act* states that unless a landlord gives written consent, a tenant must not apply a security deposit or pet damage deposit as rent.

As per the tenant's testimony I accept that the tenants failed to pay the full amount of rent for the month of August 2014 and I find the landlord is entitled to \$747.50 as unpaid rent.

In regard to the late fee for the month of April, 2014 I find that when two parties provide equally plausible but different accounts of events, the party with the burden of proof must provide additional evidence to substantiate their claim. Based on the testimony from both parties I find the landlord has failed to provide any additional evidence to confirm that the tenant had failed to provide the landlord with a rent cheque prior to the due date for the month of April 2014. Therefore, I dismiss this portion of the landlord's claim.

As the tenant did not provide any evidence that she had the consent of the landlord to use her security deposit to pay for rent for the month of August 2014 I find the tenants were late in paying the rent as was required under the tenancy agreement and the landlord is therefore entitled to late fees in the amount of \$20.00 for August 2014.

Section 32(2) states a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and Section 32(3) states the tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the property by the tenant.

In regard to the obstruction in the toilet, I find that the landlord must provide sufficient evidence to establish that the tenants put the obstruction in the toilet. However, as the parties confirm that there are no records of any problems with the toilet until after the landlord's maintenance staff had removed and replaced the toilet to complete drywall work I find, on a balance of probabilities that the obstruction had previously been in the toilet and the movement of the toilet is what caused the obstruction to begin to cause the problem.

As such, I find the landlord cannot say with any certainty when the obstruction was placed into the toilet in the first place. Therefore, I find the landlord has not provided sufficient evidence to establish that these tenants are responsible for any costs associated with the toilet blockage and I dismiss this portion of the landlord's claim.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

I accept that the tenant has agreed to the landlord's request to recover the cost of carpet cleaning. However, as the landlord had provided only an estimate at the time the tenant agreed and the actual amount is less than that estimate, as noted above, I find the landlord is only entitled to the actual cost of carpet cleaning, in the amount of \$89.68.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$882.18** comprised of \$747.50 rent owed; \$20.00 late fee for August 2014; \$89.68 carpet cleaning and \$25.00 of the \$50.00 fee paid by the landlord for this application, as they were only partially successful in their claim.

I order the landlord may deduct the security deposit and interest held in the amount of \$747.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$134.68**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 13, 2015

Residential Tenancy Branch

